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September 27, 2004

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SEP 27 2004

Federal Communications Commission
Office of Secretary

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 123th Street, SW
Washington, DC 20554


Re: In the Matter of Amendment of Section 73.606(b), Table of
Allotments, Television Broadcast Stations, and
Section 73.622(b), Table of Allotments Digital Television
Broadcast Stations (Columbia and Edenton, North Carolina)
MB Docket No. 04-289
RM-10802

Dear Ms. Dortch:

Enclosed, on behalf of The University of North Carolina, are an original and four copies of
Comments, together with five copies of Annexes, for filing in the above-referenced matter.

If any questions should arise during the course of your consideration of this matter, it is
respectfully requested that you communicate with the undersigned.

Sincerely,


Wade H. Hargrove
Counsel to The University of North Carolina

Enclosures

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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SEP 27 2004

**Federal Communications Commission
Office of Secretary**

In the Matter of

**Amendment of Section 73.606(b),
Table of Allotments,
Television Broadcast Stations, and
Section 73.622(b), Table of Allotments
Digital Television Broadcast Stations
(Columbia and Edenton, North Carolina)**

MB Docket No. 04-289
RM-10802

To: Chief, Video Division
Media Bureau

**COMMENTS OF
THE UNIVERSITY OF NORTH CAROLINA**

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September 27, 2004

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Summary

The Petition requests an administrative change in the designation of WUND's community of license from Columbia, North Carolina, to nearby Edenton, North Carolina.

Columbia, North Carolina, is assigned by Nielsen Media Research to the Greenville-Washington-New Bern DMA ("Greenville DMA"). Edenton, North Carolina, is assigned by Nielsen to the Norfolk-Portsmouth-Newport News, Virginia DMA ("Norfolk DMA"). The redesignation of WUND's community of license to Edenton is necessary so that WUND may be retransmitted by satellite, on a local-into-local basis, to thousands of satellite subscribers residing in nine counties in northeastern North Carolina that have been assigned by Nielsen to the Norfolk DMA. Some 10,000 households in these nine counties now receive television service by satellite and that number is growing at a steady rate.

WUND is one of the eleven full-power television stations and numerous translators comprising the UNC-TV network. As a satellite station, WUND rebroadcasts UNC-TV's noncommercial educational programming, including original programming directed generally to North Carolina issues and concerns as well as programming directed specifically to the northeastern region of North Carolina. This North Carolina specific programming is unique and is not offered by any other programming provider. Although WUND serves northeastern North Carolina with a Grade B signal, because Nielsen has assigned the nine counties in this area to the Norfolk DMA, satellite subscribers in these counties are faced with the anomalous circumstance of being able to receive services by satellite from a Virginia public broadcast station but being unable to receive public broadcast programming—and, more particularly, North Carolina news, public affairs, and educational programming—from their local North Carolina public broadcast station. These citizens

live and pay taxes in North Carolina, and some of those taxes are used to support the statewide network and specific North Carolina public broadcast programming they cannot receive by satellite.

The Petition has widespread public support among local government officials, citizens, and viewers in northeastern North Carolina. Over 900 citizens have written to express their support for the Petition and to document the need for delivery of WUND's and UNC-TV's programming by satellite in northeastern North Carolina. Importantly, the Tyrrell County Board of Commissioners, representing the local county where Columbia (WUND's present community of license) is located, and many individual citizens from Columbia, itself, and the surrounding area have expressed strong support for the Petition.

This overwhelming grassroots and local public officials' support is reflective of the fact that grant of the Petition will result in no loss or diminution of service to WUND's current community of license but will only result in a net gain to subscribers of satellite service desiring UNC-TV's programming. WUND is not relocating its transmission facilities, so WUND will, therefore, continue to serve the very same over-the-air and cable subscriber viewers as before. Likewise, because two other full-power satellite stations affiliated with the UNC-TV network—WUNK-TV, Greenville, North Carolina, and WUNM-TV, Jacksonville, North Carolina—are located in the Greenville DMA, existing satellite subscribers in the Greenville DMA will continue to receive UNC-TV signals as before. Moreover, WUND does not have local studios in Columbia nor the capacity to originate programming in Columbia. Thus, the proposed redesignation of the community of license will not result in any inconvenience or loss of access to local studio facilities for the residents of Columbia or Tyrrell County.

Under these unique circumstances, to the extent required, waiver of the general policy against removal of a community's sole transmission service is justified, and grant of the Petition will result in a preferential arrangement of allotments. With grant of the Petition, approximately 10,000 current satellite subscribers will be provided access to UNC-TV's service with no adverse impact on the service provided to existing viewers and subscribers. Moreover, UNC-TV currently has three full-power television stations licensed to the Greenville-Washington-New Bern DMA. Given the presence of WUND's two sister stations in the Greenville DMA, the redesignation of WUND will serve the goal of geographic dispersal of television allotments.

For these reasons, the Petition should be granted.

* * *

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.606(b),)	MB Docket No. 04-289
Table of Allotments,)	RM-10802
Television Broadcast Stations, and)	
Section 73.622(b), Table of Allotments)	
Digital Television Broadcast Stations)	
(Columbia and Edenton, North Carolina))	

To: Chief, Video Division
Media Bureau

COMMENTS OF THE UNIVERSITY OF NORTH CAROLINA

In response to the Notice of Proposed Rule Making, DA 04-2396, released August 6, 2004, (the "NPRM") in the above-captioned matter, The University of North Carolina ("UNC"), licensee of non-commercial Television Stations WUND-TV, Channel 2, and WUND-DT, Channel 20, Columbia, North Carolina (collectively "WUND"), by its counsel, files these Comments in support of the above-referenced Petition for Rule Making (the "Petition") and to affirm its continued interest in the allotment proposed therein. In support thereof, it is shown as follows: the Petition is in the public interest for the reasons stated in (i) UNC's Petition, (ii) its Response to the Opposition of Hampton Roads Educational Telecommunications Association, Inc.¹ and (iii) the Comments set forth below.

¹ The Commission dismissed the Opposition as prematurely filed. See NPRM, at ¶ 1 n.2.

I.
PRELIMINARY STATEMENT

The NPRM, although proposing to redesignate the community of license of WUND from Columbia to Edenton as requested by UNC in its Petition, states its concern that "the petitioner has [not] demonstrated that its proposal would result in a preferential arrangement of allotments." NPRM, ¶ 6. More specifically, the NPRM states that "[w]hile it is true that the reallocation [sic] of WUND's channels to Edenton would provide the community with its [first] local transmission service, it will be at the expense of Columbia, a community that would lose its sole existing transmission service." *Id.* The NPRM goes on to conclude that, based on UNC's showing in its Petition, "petitioner's reliance on population gains attributed to UNC-TV's carriage on DBS . . . is too speculative." *Id.*

These Comments serve to respond to the NPRM by demonstrating why the Petition will, in fact, result in a preferential arrangement of allotments, that the proposal does not compromise or diminish service to Columbia, and that public officials in Tyrrell County and the area as well as citizens of Columbia and elsewhere in northeastern North Carolina strongly support the proposal. In addition, these Comments provide specific data, combined with hundreds of letters from the public indicating a need and desire for satellite delivery of WUND which, in turn, is more than sufficient to establish the population gains in service referenced by the NPRM. Finally, in response to the NPRM's request that UNC provide certain data and analyses,² attached is an Engineering

² Specifically, the Commission requested "that petitioner submit an analysis of the television transmission services licensed to serve the 'Tidewater Market,' as well as the television reception services and population figures currently receiving these services. In addition, [the Commission] request[ed] an analysis of the television reception services currently received in the communities of Edenton and Columbia, North Carolina." NPRM, at ¶ 6.

Statement (Exhibit 3) containing the market analysis requested in the NPRM along with satellite viewer subscriber data.³

These data, together with the other showings made in these Comments, demonstrate the overwhelming public interest served by grant of the Petition.

II. BACKGROUND

UNC's Petition requests a change in the Commission's designation of WUND's community of license from Columbia, North Carolina, to nearby Edenton, North Carolina.

By law, UNC-TV is required "to provide research, development, and production of noncommercial educational television programming and program materials; to provide distribution of noncommercial television programming through the broadcast facilities licensed to [UNC]; and otherwise to enhance the uses of television for public purposes." N.C. Gen. Stat. § 116-37.1(a). Pursuant to this statutory mandate, UNC-TV operates a statewide public educational television network ("UNC-TV") consisting of a main production facility in the Research Triangle Park, eleven full-power analog and digital satellite television stations (of which WUND is one), and numerous translator stations. See Exhibit I (map showing existing coverage of UNC-TV's statewide network).

The importance of the statewide UNC-TV network to the citizens of North Carolina cannot be overstated. The UNC-TV network is unique in that it links citizens all across North Carolina (the

³ In summary, Columbia receives 3 analog and 2 digital (for a total of 5) television services providing service to 50% or more of the community, and Edenton receives 9 analog television stations providing service to 50% or more of the community. Five or more analog television reception services are available to 95.3% of the Norfolk DMA. Also, as shown in the Petition, grant of the Petition would result in the first television transmission service in Edenton, while, at the same time, removing Columbia's sole television transmission service.

eleventh most populous state) to each other to form a single, cohesive public television broadcast community. UNC-TV brings thousands of hours of local, state, and national public television broadcast programming to the State every year.

UNC-TV, through its network of satellite stations and translators, is able to serve all 100 counties in North Carolina with a free, over-the-air broadcast service. UNC-TV's signal is also retransmitted by all but one cable television system in the State,⁴ and, for all practical purposes, UNC-TV is available to cable subscribers wherever there is cable service in North Carolina. However, UNC-TV has not yet been able to achieve ubiquitous retransmission by DBS throughout the State. Significantly, UNC-TV is unable to obtain satellite carriage of its local network satellite stations on a local-into-local basis in nine counties in northeastern North Carolina—notwithstanding the fact that its local satellite station, WUND, places a Grade B signal in all nine counties. This anomaly is a result of the fact that these nine counties have been assigned by a non-governmental third party, Nielsen Media Research, to the Norfolk-Portsmouth-Newport News, Virginia DMA (the "Norfolk DMA"), while Columbia, the community of license of UNC-TV local satellite station WUND, is located in the Greenville-Washington-New Bern DMA ("Greenville DMA") rather than the Norfolk DMA. Under the "local-into-local" provisions of the Communications Act, as amended by the Satellite Home Viewer Improvement Act of 1999, where satellite carriers offer local signals in a local DMA, they are required, upon request, to carry the signals of all local stations located within that DMA.⁵ Therefore, the satellite carriers offering local-into-local service in the Norfolk

⁴ The lone exception is Cherokee Cable serving the Town of Cherokee, and UNC-TV has applied for a booster station to enhance the signal that it provides to this system so that it will be carried in Cherokee as well.

⁵ See 47 U.S.C. § 338; 47 C.F.R. § 76.66.

DMA are not required to carry WUND because it is licensed to a community that falls just outside the Norfolk DMA. See Exhibit A.

The nine counties affected by this market designation anomaly are Camden, Chowan, Currituck, Dare, Gates, Hertford, Northampton, Pasquotank, and Perquimans Counties (the "Nine Counties" or "Nine County Area"). See Exhibit 2 (map showing Nine County Area). These Nine Counties have a population of some 161,000 persons and are located in one of the more rural areas in the State. See *infra*, Section III.B. Because the Nine Counties have been assigned by Nielsen to an out-of-state DMA, thousands of satellite viewers in these Nine Counties are denied access to news, educational, public affairs, and other noncommercial programming offered by UNC-TV.

With the exception of viewers in the Nine County Area, viewers within each UNC-TV station's Grade B service area throughout the State already have access by satellite to their local UNC-TV network station or will have access by satellite when local-into-local satellite service commences in their particular market. Put another way, currently 97 of North Carolina's 100 counties are located within the Grade B contour of one or more of the full-power stations comprising the UNC-TV network.⁶ The *only* North Carolina residents that are both (1) located within the Grade B contour of a full-power UNC-TV network television station and (2) unable, *purely as a*

⁶ See Exhibit 1 (map showing UNC-TV network station Grade B contours). Only North Carolina's three western-most counties, Cherokee, Clay, and Graham, do not receive Grade B coverage from any full-power UNC-TV station, but UNC-TV nonetheless serves these counties via translator facilities. Nielsen has designated Cherokee County part of the Chattanooga DMA and Clay County part of the Atlanta DMA; because UNC-TV does not have a full-power station licensed to a community assigned to these DMAs, North Carolina residents in Cherokee and Clay counties cannot receive UNC-TV programming via DBS. Because Graham County is designated part of the Greenville-Spartanburg-Asheville-Anderson DMA, a DMA to which WUNF-TV's community of license is assigned, viewers there can receive UNC-TV programming via cable or satellite despite being outside the Grade B contour of a full-power UNC-TV station.

function of Nielsen's market designations, to receive UNC-TV programming via DBS, are the more than 161,000 citizens of the Nine Counties.⁷

For these 161,000-plus taxpaying North Carolina citizens, this is an important public policy issue. The UNC-TV network is funded in part by state tax revenues from citizens and viewers in the Nine County Area. The overlay of the FCC's channel allotments and Nielsen's commercial market designations produces, for citizens and viewers in the Nine County Area, an inequitable, illogical, and arbitrary result. The anomaly is an unintended consequence of the overlay of a *private entity's* market designations on the Commission's channel allotment table. The purpose of the Petition is to correct this anomaly.

As noted above, the Petition requests that WUND's community of license be redesignated in the Table of Allotments from Columbia to Edenton. Edenton is located in adjacent Chowan County and within the Norfolk DMA, so with the Commission's purely administrative redesignation of WUND's community of license to Edenton, WUND will qualify for satellite carriage in the Norfolk DMA, which, in turn, will provide access to UNC-TV's programs to thousands of satellite viewers in the Nine Counties. There are presently some 10,000 households in the Nine County Area that receive their delivery of programming by satellite (*see Engineering Statement*) who, if the Petition is granted, will be able to receive WUND and their State's public broadcast network

⁷ All population data herein is derived from the U.S. Census Bureau's web portal at <http://quickfacts.census.gov/qfd/states/37000.html>. In fact, Northampton County and a portion of Hertford County are within the Grade B contour of two stations (WUNP-TV/DT and WUND) airing UNC-TV programming, yet viewers in those counties can receive neither station via DBS service. There may be North Carolina residents located in counties other than the Nine Counties who cannot yet receive UNC-TV programming via DBS, but those viewers are affected only by DBS provider decisions whether (or when) to provide local-into-local service and are not hamstrung by an FCC allotment and Nielsen market designation that prevents them from *ever* receiving UNC-TV programming via local-into-local satellite carriage, as is the case in the Nine Counties.

programming by satellite. The change will harmonize satellite carriage and cable carriage of WUND. It will also provide satellite viewers, who may be located in areas beyond the reach of cable television in the rural Nine County Area, with access to UNC-TV's programming.

As demonstrated by the some 914 citizen letters, the letters from the County Commissions of Tyrrell, Currituck, Dare, Pasquotank, and Perquimans County, as well as the letters from the Town of Edenton and the County Managers from Gates County and Hertford County, copies of which are being filed concurrently with these Comments, there is overwhelming local public support for the Petition. *See Exhibit 6* (letters from local governments and officials); *Annexes 1-3* (letters from citizens). Significantly, the Board of Commissioners of Tyrrell County, the county in which Columbia is located, recognizes the greater public interest to be served by grant of the Petition and supports the requested change in WUND's community of license from Columbia to Edenton for the reasons set forth in their letter in *Exhibit 6*. This outpouring of support is an overwhelming affirmation of the public interest benefits of the Petition. It is clear the local citizens and government officials of this area understand and recognize that the issue in this proceeding for Columbia and the area is not a loss but rather an addition of television service.

III. UNC'S PETITION ADVANCES THE PUBLIC INTEREST AND IS CONSISTENT WITH THE COMMISSION'S ALLOTMENT PRIORITIES

Section 1.420(i) of the Commission's rules permits the modification of a station's community of license without affording other interested parties an opportunity to file competing expressions of interest when (i) the new allotment would be mutually exclusive with the existing allotment, (ii) the change would not deprive a community of its sole existing broadcast station, and (iii) the reallocation

will result in a preferential arrangement of allotments applying the Commission's television allotment priorities. Mutual exclusivity is not in issue here since the requested allotment is mutually exclusive with the existing allotment. As shown below, waiver (to the extent necessary) of the Commission's general policy against removal of a sole transmission service is appropriate under the unique facts of this case, and grant of the Petition will result in a preferential arrangement of allotments.

A. To The Extent Required, Waiver Of The Prohibition Against Removal Of A Sole Transmission Service From The Table Of Allotments Is Appropriate Given The Considerable Public Interest Benefits Resulting From Grant Of The Petition

As noted in the NPRM, a change in the community of license of WUND from Columbia to Edenton would remove Columbia's sole television transmission service. However, the redesignation of WUND's community of license to Edenton represents a "removal" or "loss" of transmission service for Columbia in theory only because in reality the *only* change at issue here is a purely administrative redesignation. WUND is a satellite station that rebroadcasts the programming of UNC-TV's statewide noncommercial education network; it has no studio in Columbia (nor will it in Edenton); and it originates no programming from Columbia, nor will it from Edenton. There is no risk of loss of service to a single viewer; the only "real world" effect—and it is an important consequence of the redesignation of Edenton as the community of license—is that the 161,000 citizens in the Nine County Area around Columbia and Edenton will now have access to WUND's programming by satellite. Accordingly, to the extent necessary, a waiver is appropriate. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations*

to Specify a New Community of License, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990), at ¶ 17 ("Community of License MO&O").

1. There Is Widespread Support for the Petition from the Interested Public

The Commission notes in its *Community of License MO&O* that waivers of the prohibition against removal of a sole transmission service are appropriate in certain limited circumstances where there are "sufficient public interest factors to offset the expectation of continued service." *Community of License MO&O*, at ¶ 19. Here, the public interest, as expressed by citizens and local government officials in the affected region, strongly supports grant of the Petition.

Importantly, the county in which Columbia is located—Tyrrell County—has publicly expressed its support for UNC's Petition. The Tyrrell County Board of Commissioners has submitted a letter to the FCC stating:

Because our county and the northeastern region of North Carolina is rural by nature, many citizens in our area rely on satellite to receive television programming. Unfortunately, citizens in several of our neighboring counties cannot now receive North Carolina's public television network, UNC-TV, by satellite. . . .

Since the UNC-TV network is paid for and supported by taxpayers throughout our state, it is unfair that all of the citizens in the northeast region of the state cannot now receive their state public TV network by satellite. We urge the FCC to change that by redesignating WUND's city of license to Edenton.

The County Commissioners of Tyrrell County in which Columbia is located do not view this proposed change in the city of license of WUND an abandonment in any way of service to the citizens of Columbia or Tyrrell County. WUND serves the region and should be available by satellite to all citizens in their region.

We think the change will further our regional efforts at economic development and make our region an even more attractive area in which to work and live.

Letter of J.D. Brickhouse, County Administrator (Exhibit 6). Clearly, in the view of the Tyrrell County Commission, grant of the Petition will not result in any loss of service to Columbia or Tyrrell County and is, indeed, preferential to the current allotment. The very community the Commission's allotment rules seek to protect supports the Petition, recognizing the larger public interest in allowing UNC-TV to serve satellite viewers in northeastern North Carolina. Similar expressions of support have been received from the County Commissions of Currituck, Dare, Pasquotank, and Perquimans Counties, and the County Managers from Gates and Hertford Counties—together representing six of the Nine Counties—as well as from the Town of Edenton (located in Chowan, the seventh of the Nine Counties) (Exhibit 6). All of these local governments and officials express strong support for the Petition and attest to the need for UNC-TV programming via satellite in the Nine Counties.

Consistent with the expression of support of the Tyrrell County Commission, as of this date, 195 North Carolina citizens in the Greenville DMA, including citizens in Tyrrell County and Columbia, have submitted letters supporting UNC's Petition. Among the comments made by the citizens in these letters are the following (*see Annex 2*):

As a former teacher in the area mentioned, I know how beneficial it would be to schools and families to be able to access UNC-TV (emphasis in original).

—Ms. Mollie Bowen

My family benefits immensely from UNC-TV. Please help others to access this valuable service.

—Ms. Karen Lovejoy

As a resident of N.E.N.C. [northeastern North Carolina], I strongly support this change to Edenton, N.C. as community of license.

—Mr. Roy Lilley

These counties need the educational and informative programming of public television even if they use satellite.

—Rev. Taylor Mills

The importance is great that UNC TV programming be available to all NORTH CAROLINA viewers—via satellite, cable, over the air (emphases in original).

—Ms. Mary Modlin

This should be a given[,] not an option for all North Carolinians (emphases in original).

—Ms. Ila Parker

Similarly, some 543 North Carolina citizens in the Nine Counties have submitted letters supporting the Petition. Among the comments made by these citizens are the following (*see Annex 1*):

I am one of the 10,000 people [i.e., satellite subscribers] mentioned in this letter.

—Mr. Gregory Compher

For many of us in NENC, [UNC-TV] is our only/main source of NC news since most of our TV viewing/radio listening/newspaper reading sources come out of VA. Please help us keep this resource! (Emphasis in original.)

—Ms. Pat Familiar

I . . . heartily support the proposal before you to greatly increase those viewers who want to receive UNC-TV by satellite. Please change the city of license for UND-TV/DI from Columbia to Edenton. Viewers in Columbia will suffer no loss. I strongly support UNC-TV's petition. (Emphasis in original.)

—Ms. Doris Ferguson

I receive WUND on cable now, but will soon be moving to an area where only satellite is available. Please pursue this quest diligently.

—Mr. Oni Houston

Rural N.C. needs this.

—Ms. Mildred Kane

I strongly support this petition. Having lived in various NC counties and enjoying the wonderful programs of UNC-TV, I cannot imagine being deprived of these programs.

—Ms. Gwendolyn McGhee

I have not visited Norfolk in over 30 yrs and cannot relate to their PBS station—I never watch it. I'm a TARHEEL. (Emphases in original.)

—Mr. Herman Morris

UNC-TV programs featuring North Carolina topics are of great interest to us. We ask that the fullest access to such high quality programs be made available to the public.

—Helen and Robert Pitsch

I strongly support this petition. Last year I called Directv (our satellite TV provider) requesting that we receive UNC-TV, and was told Directv could do nothing about the problem. My hope is the FCC will not be bureaucratic concerning this issue, and will grant this request in a timely manner (ASAP)!

—Mr. Gaylord Swersky

UNC-TV by satellite would mean a lot to us in rural northeastern North Carolina.

—Mr. Peter Wood

Because there are no major TV stations or newspapers on the Outer Banks, we definitely need a way to get N.C. news!

—Ms. Jane Wright

Some 176 Virginia citizens residing in the Norfolk DMA have also submitted letters supporting the Petition, many of whom receive WUND over-the-air or by cable. Among the comments made by these citizens are the following (see Annex 3):

My wife and I frequently watch UNC-TV on cable. It is not available in our area otherwise and many people in the Norfolk-Virginia Beach-Hampton Roads area who are without cable would benefit from the above-mentioned change. We are hoping that this change will be approved.

—Mr. Ted Coleman

I moved here from N.C. 6 years ago and was so glad when I could get UNC-TV. I love your programs so much.

—Ms. Betty Atkinson

Our family here in Portsmouth Va. watch UNCTV every day.

—Ms. Blanche Baggett

I would have converted more than a year ago if WUND-TV had been available on satellite. It has more programs this family enjoys . . .

—Mr. G.E. Bishop, Jr.

UNC-TV is actually my favorite channel because of the excellent quality of its many and varied presentations.

—Mrs. Mary Kay Jewell

As an employee of the Norfolk school system, I appreciate the children's shows on UNC-TV. I support UNC-TV . . . because of the children's programming viewed by my toddler.

—Ms. Robin Putnam

These letters demonstrate dramatically the desire for citizens in northeastern North Carolina to receive UNC-TV network programming via satellite and otherwise. This desire is not hypothetical and uncertain but rather is real and tangible as attested by the citizens themselves in their letters.

2. Grant of the Petition Will Allow Satellite Subscribers to Receive UNC-TV's Service

According to 2000 Census data, there are 66,931 households in the Nine Counties, and a total population of 161,036 persons. As of July 2004, when only DirecTV was providing local-into-local service in the Norfolk DMA, there were 9,528 households in the Nine Counties subscribing to DBS.

See Engineering Statement, at 3. This means that, even with data that does not reflect the introduction of local-into-local service in the Norfolk DMA in August 2004 by EchoStar, nearly 15 percent of North Carolina households in the Nine Counties receive television programming via satellite.⁸ Unless and until a community of license change is granted to WUND, a minimum of 15 percent of North Carolina households in the Norfolk DMA will be unable to receive UNC-TV network programming via their satellite service.

In fact, of the 66,931 households in the Nine County Area, almost 10,000 subscribe to DBS and nearly 50,000 subscribe to cable.⁹ With nearly 60,000 of the 67,000 or so households in the Nine County Area subscribing to cable or DBS, and with nearly 75% of all homes passed being cable subscribers, the Commission cannot and should not ignore subscription services in evaluating the merits of the Petition—particularly in light of the demonstrated demand for these services in the more than 900 letters submitted to the Commission supportive of UNC's request (*see Annexes 1-3*). With only approximately 7,000 households viewing WUND via over-the-air reception in the Nine

⁸ The entry of EchoStar into the Norfolk DMA in August 2004 will undoubtedly increase the number of subscribers and corresponding percentage of households served by satellite. In fact, nationally, 20 percent of households are DBS subscribers, *see Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 19 FCC Rcd 1606 (2004) ("Tenth Annual Assessment"), at ¶ 65, and the disparity between the national percentage and the Nine Counties percentage strongly suggests that the Nine County Area has not yet approached DBS subscription saturation.

⁹ This figure is derived from *Television & Cable Factbook*, Cable Volume No. 72, 2004 Edition, Warren Publishing, Inc. ("Factbook"). This figure is not exact, as two of the cable systems listed in the *Factbook* serve portions of counties which lie outside of the Nine County Area, and no further breakdown of subscriber location is available. There are also approximately 64,866 homes passed in the Nine Counties. After discounting the number of subscribers by 2,120 to account for a cable system in Corolla, North Carolina, for which there is no corresponding homes-passed data, the resulting percentage of cable subscribers to homes passed in the Nine County Area is 73.6 percent. As stated previously, however, UNC-TV is carried on the cable systems in these areas. *See Declaration of Carl Davis*.

County Area, the DBS subscriber rate eclipses the rate of over-the-air reception. And, it bears reiteration that, while none of the over-the-air viewers would lose their access to WUND if the community of license is changed, a growing number of viewers—already approaching 10,000—in the same area cannot receive any UNC-TV programming via satellite.

The number of North Carolina satellite subscribers in the Norfolk DMA unable to receive UNC-TV programming is likely to grow. As the Commission is well-aware, the popularity of DBS services nationally continues to grow at a near-frantic pace.¹⁰ According to the Commission, in fewer than fifteen years, DBS subscribership has skyrocketed from 600,000 to 20,400,000, including a 12 percent increase in the last year alone.¹¹ In January 2004, the Commission noted:

These rates of growth are attributed to competitive pricing, wide programming selection, higher levels of customer service, expansion of local-into-local service, and the introduction of new products such as personal video recorders.¹²

The introduction of Echostar's local-into-local service in the Norfolk DMA in August 2004, by giving viewers in that market even more options, will only accelerate the number of viewers electing to receive television service via DBS, consonant with the Commission's observations on the benefits of competition set forth in the *Tenth Annual Assessment*. Moreover, as the Commission itself reported earlier this year, "DBS continues to attract consumers who never subscribed to MVPD

¹⁰ See *Tenth Annual Assessment*, at ¶¶ 5, 8. See also "The War for Your Remote: Satellite Gains on Cable," *The Wall Street Journal*, Sept. 22, 2004, at D1 (stating that satellite companies signed up 2.3 million new subscribers in the last year while, for the first time, cable television companies lost hundreds of thousands of customers).

¹¹ See *Tenth Annual Assessment*, at ¶¶ 65-66.

¹² *Tenth Annual Assessment*, at ¶ 65.

services, as well as consumers switching from cable service.”¹³ DBS is no longer a nascent service, rather it is a fully-competitive alternative to cable service, particularly in rural areas such as the Nine County Area.

Contrary to the NPRM’s suggestion otherwise, the fact that grant of the Petition will allow UNC-TV’s noncommercial educational and original programming to be received by these some 10,000 existing North Carolina subscribers (and countless more as those numbers increase over time) in the Norfolk market is not “too speculative to be considered.”¹⁴ In support of its concern regarding the “speculative” nature of satellite service, the NPRM cites *Amendment of Section 73.606(b) Table of Allotments TV Broadcast Stations (Pueblo, Colorado)*, Memorandum Opinion and Order on Remand, FCC 99-162, 16 CR 610 (P & F) (1999) (“*Pueblo, Colorado*”), and *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) (“*Community of License MO&O*”).¹⁵ However, neither of these decisions stands for the principle that subscriber services are too speculative to be considered in this proceeding.

At issue in the *Pueblo, Colorado*, case was a proposed exchange of channels between noncommercial and commercial stations. As distinguished from the case at hand, the channel swap under consideration in *Pueblo, Colorado*, would result in a loss of service by the commercial station

¹³ *Tenth Annual Assessment*, at ¶ 65.

¹⁴ As noted previously, based on the showing made by UNC in its Petition, the NPRM stated: “We find that petitioner’s reliance on population gains attributed to UNC-TV’s carriage on DBS in the Norfolk-Portsmouth-Newport News DMA, a subscriber service, is too speculative to be considered.” NPRM, at ¶ 6.

¹⁵ See NPRM, at ¶ 6.

and would require the transfer of a short-spaced allotment originally granted to the noncommercial station. The only references in the decision to consideration of subscription services are in paragraphs that merely describe the competing arguments made by the parties on remand concerning whether subscription services, offering third party signals, should be considered as a mitigating factor in evaluating the loss area resulting from the proposed allotment exchange:

[T]he Petitioners cite to the fact that the outlying portions of the loss area are served by DBS and cable television service. . . .

AK Media argues that the existence of cable and DBS service in the loss area should not be considered as a mitigating factor because the Petitioners have not provided specific calculations on the number of cable and DBS subscribers in that area.¹⁶

The full Commission decision, however, does not even discuss, much less rule on, these arguments or the issue of whether subscription services are "too speculative to be considered."¹⁷ Even if the statements quoted above were attributable to the Commission—and they are not—the instant case would differ dramatically because UNC is providing, in these Comments, specific data on the number of cable and DBS subscribers in the Nine County Area, thereby addressing the criticism in the *Pueblo, Colorado*, case. Moreover, in dramatic contradistinction to the proposal in *Pueblo*,

¹⁶ *Pueblo, Colorado*, at ¶¶ 14 and 20.

¹⁷ Moreover, even the initial Report and Order rendered in *Pueblo, Colorado*, by the Chief of the Allocations Branch, 10 FCC Rcd 7662 (1995), does not stand for the principle that population gains attributable to subscription services are "speculative," and that decision does not make any mention of subscription services. That Report and Order may have rejected gains attributable to television translator stations in the context of a short-spacing waiver request due to the secondary nature of such stations' service, see *Pueblo, Colorado*, Report and Order, at ¶ 24, but UNC's Petition has nothing to do with television translators or short-spacing. The evaluation of an unserved area is obviously much different than, as in this case, the evaluation of potential new service to satellite subscribers.

Colorado, UNC's proposal contemplates no loss area and, in fact, is premised upon serving additional viewers with *its own signal* as transmitted via DBS.

The NPRM's citation to the *Community of License MO&O* is equally unavailing, as the *Community of License MO&O* does not contain a single reference to cable or satellite services.

In the context of this unique case, where (i) no loss or diminution of service is in issue, (ii) grant of the Petition would help facilitate the delivery of UNC-TV's statewide noncommercial educational television network to unserved satellite subscribers in nine North Carolina counties, (iii) UNC has presented specific satellite subscribership data as well as letters from hundreds of potential subscribers desiring UNC-TV's service, the consideration of satellite subscribers in the Norfolk DMA is sufficiently real and concrete for consideration. UNC has shown that some 10,000 households in the Nine County Area currently subscribe to DBS and are unable to receive UNC-TV's signals. Moreover, the citizen and governmental letters submitted with these Comments attest to the strong desire and need for UNC-TV's service via satellite in the Nine Counties. Indeed, for full consideration to be given to the public interest factors at issue in this case, the Commission would be remiss not to consider DBS carriage. A decade ago, in the course of eliminating the network stations ownership rule, the full Commission observed that the existence of subscription services was germane to the calculus of whether to eliminate that ownership restriction.¹⁸ If the very existence of DBS is relevant to the issue of far-reaching, generally applicable broadcast ownership restrictions, then certainly it deserves analysis in the very specific context of whether to make a purely ministerial community of license change that would result in a quantifiable benefit to a

¹⁸ See *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 10 FCC Rcd 4538 (1995), at ¶ 10.

significant North Carolina population affected directly by subscription services and the concomitant anomaly affecting the DBS service.

The public interest would not merely be served by a grant of the proposed change—under any reasonable analysis, the public interest *requires* that the proposed change be made. As the D.C. Circuit observed in the 1984 case largely affirming the Commission's adoption of initial DBS rules:

The ultimate touchstone for the FCC is . . . the distribution of service, rather than of licenses or of stations; *the constituency to be served is people, not municipalities*. Moreover, the Commission also has an obligation to encourage the larger and more effective use of radio in the public interest.¹⁹

UNC's Petition merely seeks to further the distribution of UNC-TV programming by providing service to its constituency in the Nine County Area who cannot currently receive it. That this distribution of UNC-TV programming is in the public interest is manifest, particularly since UNC-TV programming is the only North Carolina-based public television programming available to constituents—who, through their tax dollars fund this unique and educational programming—in the Nine Counties.

3. The Original and Unique Nature of UNC-TV's North Carolina Specific Programming Supports Grant of the Petition

The Commission and Congress have long recognized a need, grounded in substantial public interest reasons, to take into account the differences between commercial and noncommercial educational stations in the regulatory scheme for broadcasting, particularly the development of the

¹⁹ *National Ass'n of Broadcasters v. FCC*, 740 F.2d 1190, 1198 (D.C. Cir. 1984) (emphasis added) (internal quotations and citation omitted).

TV Table of Allotments.²⁰ Here, this interest is paramount given the nature of UNC-TV's network and programming.

The programming aired by UNC-TV on WUND is rich and diverse, and it offers important—and often the *only*—opportunities for viewers in the Nine Counties to secure timely news and public affairs programming on North Carolina's state government. For example, WUND generally airs some 19 hours per week of North Carolina-specific programming—programming that is offered only to viewers of the UNC-TV network. These programs include a nightly information program, *North Carolina Now*; a weekly program on activities at the North Carolina General Assembly, *Legislative Week in Review*; a weekly program on activities, events, and places to go in North Carolina, *North Carolina Weekend*; a weekly interview program with prominent North Carolina citizens, *North Carolina People*; and an extensive, ongoing schedule of documentaries and specials on North Carolina cultural activities and events. See Exhibits 4 & 5. In addition, over 13 hours per week of broadcast time are dedicated to adult telecourse programming, which provides educational opportunities that are otherwise unavailable to residents in the Nine Counties.

Thus, many of the UNC-TV programs are specific to North Carolina, are important to the residents of northeastern North Carolina, and are not offered by any other television station—commercial or noncommercial—available via satellite in the Nine Counties. Indeed, WUND carries programming that is *specifically directed to the Nine County Area*, but which will remain inaccessible to 10,000 or more DBS households in those counties unless and until WUND's allotment is re-designated to a community located within the Nine County Area. For example,

²⁰ *Pueblo, Colorado*, at ¶ 10 (citing *Sixth Report and Order*, Docket Nos. 8736 and 8975, 41 FCC 148 (1952) and *Rainbow Broadcasting Co. v. FCC*, 949 F.2d 405 (D.C. Cir. 1991)).

Exhibit 4 lists programming aired by UNC-TV in just the past twelve months that has been specifically directed to the northeastern region of North Carolina, including the Nine Counties and the Outer Banks. (This list does not include other North Carolina-specific programming of general interest to citizens in this area.) These programs include:

- * Multiple programs describing recovery efforts from hurricanes and other storms that have ravaged the Outer Banks and northeastern North Carolina.
- * A 60-minute program celebrating North Carolina's Outer Banks.
- * A 30-minute program featuring a 120-mile river trip up the Albemarle Sound and along the Roanoke River.
- * A 30-minute program featuring officials from Elizabeth City State University and the Pasquotank County Schools discussing the reasons behind the shortage of black males in the teaching profession.

Because much of WUND's programming is produced solely for broadcast on the UNC-TV statewide network, it does not significantly duplicate the programming of any station currently offered to DBS subscribers in the Nine Counties. In fact, over 53 hours per week of WUND's programming is unavailable on any other station serving satellite subscribers in the Nine Counties. Attached as Exhibit 5 is a complete list of all UNC-TV programming *not offered by any other* television station serving satellite subscribers in the Nine Counties, including all North Carolina-specific programming produced for broadcast on the UNC-TV statewide network.

As the Commission has observed in many contexts, the offering to viewers of additional program choices is in the public interest. Significantly, in the context of developing its cable carriage rules and addressing concerns of non-commercial television stations relating to the importation of distant non-commercial television stations, the Commission proclaimed that "the

widest possible dissemination of educational and public television programming is clearly of public benefit and should not be restricted."²¹ When later liberalizing its cable distant signal carriage rules, the Commission re-emphasized the point:

Although there are many differences between the commercial and public stations relating to possible impacts resulting from cable distant signal carriage, we do not believe these weigh in favor of more restrictive regulation with respect to carriage of public stations. Rather, we believe that the policy of encouraging the *widest possible dissemination of public television station programming should be further encouraged* by a liberalization of our rules which act to restrict carriage of non-commercial stations in markets where objections are filed.

Because these stations are so heavily dependent on tax revenues, it seems to us that we should be *especially cautious in denying citizens as much access to their output as possible*. Although perhaps ultimately justifiable if necessary for the preservation of the public television system itself, it is anomalous for government, and particularly the federal government, to contribute toward the creation of a system of public television as an alternative source of diverse programming to that supplied by the commercial stations while at the same time restricting the public's access to *additional sources* of the programming created by the system.²²

A grant of UNC's Petition would encourage the "widest possible dissemination of public television programming" to DBS subscribers from "additional sources."

²¹ *Amendment of Section 74.1031(c) and 74.1105(a) and (b) of the Commission's Rules and Regulations As They Relate to Addition of New Television Signals*, Cable Television Report and Order, 36 F.C.C. 2d 143 (1972), at ¶ 95.

²² *Cable Television Syndicated Program Exclusivity Rules; Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television*, Report and Order, Appendix C, "A Case Study Analysis of Non-Commercial Television Stations in Grandfathered Markets," at ¶¶ 14-15 (emphases added). The "objections" referenced by the Commission were those that could be filed by non-commercial stations that felt threatened by the addition of another noncommercial television distant signal to a cable system.

4. Allotment of WUND to Edenton Will Result in No Loss in Service to Columbia

Grant of the proposal will have no programmatic or service impact in or to its current community of license, Columbia, North Carolina, or, for that matter, on any current UNC-TV viewer located anywhere in the State.

First, as explained earlier, WUND will not move its transmitter facilities if the Petition is granted. WUND's transmission facilities are located approximately 5.5 miles west of Columbia. The State owns the tower and accompanying real estate accommodating these transmission facilities. As recently as 1999, UNC spent more than \$7 million to upgrade its facilities at this site to provide a more robust signal to northeastern North Carolina and to accommodate digital operation. Given this recent upgrade, and given the State's ownership of the facilities, there is no technical or operational reason WUND would alter its existing facilities if the community of license is changed; to the contrary, UNC would not propose a change in community if it entailed a change in facilities. Moreover, as WUND is part of a statewide educational television network that is governed and funded in no small part by the State of North Carolina and its constituent taxpayers—see Petition, at 9; see generally N.C. Gen. Stat. §§ 116-37.1 (describing governance of UNC-TV), 116D-1 *et seq.* (governing capital expenditures for, *inter alia*, UNC-TV)—given the recent expenditure of substantial funds on the WUND facilities there would be serious practical and bureaucratic impediments to further expenditures. Therefore, citizens in Columbia and Tyrrell County will continue to receive WUND programming over-the-air and via cable carriage as they always have, as they themselves recognize as seen through their letters of support for UNC's Petition.

Second, at present, by virtue of a waiver of the main studio requirement for its satellite stations, WUND has no studio or other physical presence or program origination facilities in its community of license, Columbia. Therefore, a change in the community of license will truly be nothing but an administrative change which will not impact the community of Columbia. In short, the redesignation will not result in any inconvenience to the citizens of Columbia in terms of access to local origination facilities.

Third, in addition to WUND, UNC-TV currently operates two other full-power stations in the Greenville DMA—WUNK-TV, Greenville, North Carolina, and WUNM-TV, Jacksonville, North Carolina. Therefore, viewers in the Greenville DMA—including viewers in Columbia—will continue to have access to UNC-TV programming via local-into-local satellite carriage even if WUND's community of license is no longer in that market.

The upshot is grant of the Petition will result in no loss of service to anyone, anywhere, but will result in the addition of new service for thousands of satellite viewers in North Carolina.

5. Grant of a Waiver Is Consistent with Commission Precedent

Commission case precedent supports the requested change. In a case presenting far less compelling and unique circumstances than the instant case, the full Commission granted the petition of a sole commercial television transmission service to change its community of license from Ardmore, Oklahoma, to Sherman, Texas ("*Ardmore-Sherman*").²³ There, as here, the petitioner

²³ *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Ardmore, Oklahoma, and Sherman, Texas)*, Report and Order, 7 FCC Rcd 4846 (1992) ("*Ardmore-Sherman*").

proposed to maintain its transmitter site at its current location and proposed no technical changes.²⁴ Additionally, as in the instant case, the proposal in *Ardmore-Sherman* involved the provision of a first transmission service to a more populous community and a change in the station's market designation.²⁵ Significantly, however, in *Ardmore-Sherman*, the Commission allowed a commercial sole transmission service to change its community from Ardmore, Oklahoma (population 21,079) to Sherman, Texas (population 31,601)—a change representing a move from one city in Oklahoma to another, larger city located in another state, Texas.

In contrast, the instant case involves a re-designation of community of license from a rural community of 819 to a rural community of 5,394, located in adjacent counties within the same state but situated in different DMAs. Also, the change in market designation in *Ardmore-Sherman* was tied to the station's commercial gain, whereas, in the instant case, the provision of additional, unique, educational programming choices to viewers in the destination market is the benefit—which redounds directly and unequivocally to the public—underpinning the proposal. Also, like the instant case, the *Ardmore-Sherman* petition proposed no loss in service and no change in main studio location.²⁶ Significantly, however, unlike the instant case, the change sought and granted in

²⁴ In *Ardmore-Sherman*, the Commission noted that certain engineering constraints would prevent the station from moving its transmitter site to a location that would be unable to provide the old community of license with a Grade A signal. While similar engineering constraints do not exist in the instant case, as discussed above, more significant practical constraints do exist, precluding a move from the present transmitter location.

²⁵ See *Ardmore-Sherman*, at ¶¶ 7, 8.

²⁶ In *Ardmore-Sherman*, the licensee already maintained two studios, one in the old community of license and one in the new community of license. In the instant case, pursuant to Commission waiver, UNC maintains a single main studio in central North Carolina, for all of the UNC-TV network stations, and there is no studio presence in Columbia or Edenton. "Therefore, as a practical matter, the residents of [Columbia] should not be deprived of any current level of service

Ardmore-Sherman resulted in service to no additional viewers. That, of course, is not true for WUND. The proposed change in community of license would only add viewers, while no household would lose WUND service or access to UNC-TV programming.

Finally, the implications of the following observations by the full Commission in *Ardmore-Sherman* apply, *a fortiori*, to the instant Petition:

While we see little risk that the level of service to Ardmore would be diminished by grant of this proposal, we believe there may be benefits in recognizing [petitioner's station's] bonds with the city of Sherman. As [petitioner] notes, [petitioner's station] is the only station providing Grade A or better service to Sherman, and has sought to address the needs of Sherman, for example, through its studio location, over the years. Given the size and importance of the community of Sherman, we believe formal recognition of this relationship is warranted. Furthermore, because this action properly reflects allotment policy, it is in the public interest as well that the station's audience in [the destination community's county] be reflected in its market, to the extent that is consistent with the policies and processes of ratings organizations.²⁷

Paraphrased to address the public interest considerations at stake in the instant proceeding, the *Ardmore-Sherman* statement could read:

While we see little risk that the level of service to Columbia would be diminished by grant of this proposal, we believe there may be benefits in recognizing WUND's connection, as a UNC-TV network station, to the Nine County Area and the anomaly that exists with respect to the ability of DBS subscribers in that area to receive UNC-TV programming. As UNC notes, UNC-TV is the only public educational statewide television network providing rich, diverse, North Carolina public affairs and educational programming to the residents throughout North Carolina and the Nine County Area and has sought to address the needs of all residents of North Carolina, including those residing in the Nine Counties, over the years. Given

as a result of this change." *Ardmore-Sherman*, at ¶ 10.

²⁷ *Ardmore-Sherman*, at ¶ 11.

the size and importance of the DBS subscriber base in the Nine County Area and that, as a result of an anomalous situation that that significant DBS subscriber population is unable to obtain access to UNC-TV programming via satellite, we believe that formal recognition of the relationship between WUND and the Nine County Area is warranted, and we recognize that the only way to recognize that relationship and correct the anomaly is to re-designate WUND's community of license from Columbia to Edenton.

Indeed, this is all UNC seeks.

B. UNC's Petition Will Result In A Preferential Arrangement Of Allotments

The manner in which the Commission evaluates allotment priorities is straightforward:

We will compare the proposed allotment plan to the existing state of allotments for the communities involved. If adoption of the proposed allotment plan would result in a net service benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments), we will adopt the proposal.

Community of License R&O, ¶ 25. The allotment priorities are: (1) to provide at least one television service to all parts of the United States; (2) to provide each community with at least one television broadcast station; (3) to provide a choice of at least two television services to all parts of the United States; (4) to provide each community with at least two television stations; and (5) to assign any remaining channels to communities based on population, geographic location, and the number of reception television services available to the community. *See Sixth Report and Order on Television Allocations*, 41 FCC 148, ¶ 63 (1952) ("Sixth R&O").

It is axiomatic that "television allotment priorities are not rigidly applied."²⁸ That is, the allotment priorities are to be applied with a view toward the ultimate public interest in ensuring the widest possible dissemination of broadcast signals. 47 U.S.C. § 307(b). This is particularly true with respect to television allotments: "We have generally been willing to apply the television priorities in a more liberal fashion than the FM priorities due to the recognition that television is a more regional service." *Community of License R&O*, ¶ 13 n. 8 (citing *Cleveland Television Corp.*, 91 FCC 2d 1129 (Rev. Bd. 1982), *aff'd*, 732 F.2d 962 (D.C. Cir. 1984)).

The view that television service is a "regional" service is consistent with WUND's initial authorization. When the Commission initially allotted the channel to Columbia, the Commission observed:

Petitioner's proposed Channel *2 would serve this community *and the surrounding area* as an important link in a proposed state-wide educational television network. It is expected that the channel will meet a real need as a source of educational programming for both schools and the general public.²⁹

As recognized by the Commission in its general allotment scheme, and as confirmed specifically in WUND's original allotment, the station is intended to and does in fact serve as an important link in

²⁸ *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Bessemer and Tuscaloosa, Alabama)*, Report and Order, 5 FCC Rcd 669 (1990), ¶ 14; accord *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) ("Community of License R&O"), ¶ 25. See also *Community of License R&O*, ¶ 22 (citing *Sixth R&O*) ("We note . . . that the Commission's policy is to apply the allotment criteria in a flexible manner where circumstances warrant.").

²⁹ *Amendment of § 73.606, Table of Assignments, Television Broadcast Stations (Columbia, North Carolina)*, Docket No. 15227, RM-437, 29 Fed. Reg. 4721 (Apr. 2, 1964) ("RM-437"), at ¶ 3 (emphasis added).

the UNC television network to citizens in northeastern North Carolina, including—but not limited to—Columbia.

With this framework in mind, the Commission's allotment priorities can be analyzed as follows.

Allotment priority one is not implicated since both Columbia and Edenton currently receive at least one television service and will continue to receive at least one service if the Petition is granted.

Allotment priority two supports the Edenton allotment. The proposed allocation would result in the first transmission service to Edenton. Accordingly, Edenton is entitled to priority under allotment priority two.

Allotment priority three is not implicated as both Columbia and Edenton currently receive at least two television services and will continue to receive two television services if the Petition is granted.

Allotment priority four is not implicated because, as stated, in either community, WUND would represent the one and only television broadcast transmission service.

Even if the provision of first transmission service to Edenton under priority two is counterbalanced by the loss of first transmission service to Columbia, Edenton remains the preferential allotment under priority five. Under this priority, the Commission shall "assign any remaining channels to communities based on population, geographic location, and the number of reception television services available to the community." For the following reasons, the Edenton allotment is preferential.

As discussed earlier, grant of the Petition will result in some 10,000 DBS subscribers receiving UNC-TV's programming service that did not receive it previously. This gain is not offset by any loss.

Geographically, as noted, the proposal contemplates no change in transmission facilities. The proposal also contemplates providing a first transmission service to the Nine County Area and a first North Carolina-licensed transmission service to the Norfolk Market, both of which further the goals of Section 307(b) of the Communications Act, as amended. Moreover, the proposal would further spread UNC-TV station's communities throughout North Carolina and remove one of the three UNC-TV stations from the Greenville DMA where UNC-TV programming presence is unduly concentrated by the presence of three stations, thereby furthering the goals of Section 307(b) to "provide a fair, efficient, and equitable distribution" of television services to the viewing public.

Both Edenton and Columbia are in rural areas. Edenton, like Columbia, is not located in a metropolitan area, as defined by the U.S. Census Bureau. Moreover, neither Edenton, nor any other part of Chowan County, is located in an urbanized area or in an urban cluster. The population of Chowan County is only 14,526—only 12 North Carolina counties have smaller populations.³⁰ In fact, consistent with the rural nature of the entire Nine County Area, five of the twelve North Carolina counties with smaller populations than Chowan are located in the Nine County Area.

This is not a case, then, where a reallocation is sought to serve a significantly larger population located in a suburban community, *see Community of License MO&O*, ¶ 18, but rather one

³⁰ There are only 84.1 persons per square mile in Chowan County; by comparison, statewide there are 165.2 persons per square mile in North Carolina.

where a reallocation is sought from one rural community to another rural community which will cause UNC-TV's service to be available to a substantial new population of DBS subscribers.

Thus, both the provision of a programming reception service to a substantial number of DBS subscribers combined with geographical spacing of allotments are factors that would be favorably served by grant of the proposal, which would result in a preferential distribution of allotments.

Conclusion

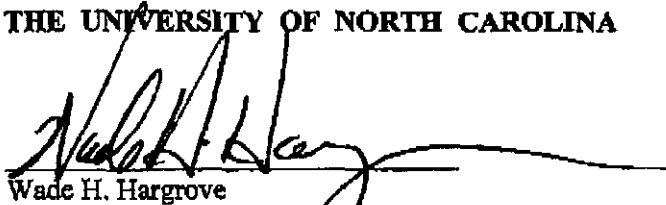
For the foregoing reasons and for the reasons stated in UNC's Petition and in its Response to the Opposition of Hampton Roads Educational Telecommunications Association, Inc., UNC respectfully requests that the Commission grant UNC's Petition. As shown, grant of the Petition:

- (i) will entail merely the administrative redesignation of WUND's community of license from one rural area of North Carolina to another rural area in the adjoining county;
- (ii) will allow some 10,000 subscribers of satellite service in northeastern North Carolina to have access to UNC-TV's statewide noncommercial educational programming, including UNC-TV's programming specifically directed at North Carolina issues and concerns;
- (iii) will not affect any current viewer's or subscriber's receipt of UNC-TV's service;
- (iv) will serve the allotment goals of widely disseminating television programming signals—in particular noncommercial educational programming—and widely disbursing the allotment of television channels; and,
- (v) enjoys widespread support among citizens and governmental officials in northeastern North Carolina, including citizens and government officials from the area of WUND's current community of license, Columbia.

For these reasons, the Petition should be granted.

Respectfully submitted,

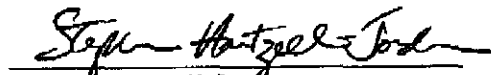
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